IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 132 OF 2000
AND
CROSS OBJECTION NO. 10 OF 2000.

FIRST APPEAL NO. 132/2000.

1. State of Goa,
   Rep. by Land Acquisition Officer,
   South Goa Sub-Division,
   Quepem, Goa.

2. Executive Engineer,
   Works Division XIV (NH),
   Public Works Department,
   Fatorda, Margao, Goa. ... Appellants.

Versus

1. Filomena Pinto,
   residing at Bandfol,
   Chinchinim, Salcete, Goa.

2. Conceicao H.A. Pinto,
   r/o Chinchinim. ... Respondents.

Shri H.R. Bharne, Government Advocate for the Appellants.

Shri S.S. Kakodkar, Advocate for the Respondents.

CROSS OBJECTIONS NO. 10/2000.

1. State of Goa,
   Rep. by Land Acquisition Officer,
   South Goa, Sub-Division,
   Quepem, Goa.

2. Executive Engineer,
   Works Division XIV (NH),
   Public Works Department,

Fatorda, Margao, Goa. .... Cross Objectioners.

Versus

1. Filomena Pinto,
resident at Bandfol,
Chinchinim.

2. Conceicao H.A. Pinto,
resident of Chinchinim. ..... Respondents.

Shri H.R. Bharne, Government Advocate for the Cross Objectioners.

Shri S.S. Kakodkar, Advocate for the Respondents.

CORAM: R. M. LODHA, J.

DATE: 19th OCTOBER, 2005.

ORAL JUDGMENT:

The IInd Addl. District Judge, Margao vide Judgment and Award dated 29th February, 2000 awarded the compensation for acquisition of of barad land (garden land) admeasuring 365 sq. metres at the rate of Rs.100/- per sq.m. and paddy land admeasuring 1027 sq.m. at the rate of Rs.5/- per sq.m. Both the parties are dissatisfied by the said Judgment and Award. The State of Goa through the Land Acquisition Officer, Sought Goa, Sub-Division Quepem and the Executive Engineer, Works Division XIV, P.W.D. Fatorda, Margao have preferred First Appeal aggrieved by the award of compensation for barad land admeasuring 365 sq. metres at the rate of Rs.100/- per sq.m. The claimants are aggrieved in respect of compensation for compulsory acquisition of paddy field admeasuring 1027 sq.metres.

They have, accordingly, filed Cross Objections. Since the First Appeal and the Cross Objections arise out of the same Judgment and Award, both were heard together and are being disposed of by this common judgment.

2. The Government of Goa, issued Notification on 23.5.1988 under Section 4(1) of the Land Acquisition Act that was published in the Government Gazette on 18.8.1988 whereby the land admeasuring 612 sq.m. of the property surveyed under No.430/13 and 780 sq.m. of the property surveyed under No.433/8 of village Chinchinim, Salcete Taluka along with other land was sought to be acquired for widening and improvement of National Highway 17. The Land Acquisition Officer vide his Award dated 11.10.1991 offered compensation for an area of 175 sq.m. (barad land) out of survey No.430/13 and for an area of 192 sq.m. (barad land) out of survey No.433/8 at the rate of Rs.13/- per sq.m. The Land Acquisition Officer offered the compensation for an area of 437 sq.m. (paddy field) out of Survey No.430/13 and 588 sq.m. (paddy field) out of Survey NO.433/8 at the rate of Rs.5/- per sq.m. The respondents (claimants) were dissatisfied with the award of the Land Acquisition Officer and sought reference claiming compensation for barad land at the rate of Rs.300/- per sq.m. and paddy field at the rate of Rs.150/- per sq.m.

3. Before the Reference Court, one of the claimants - Filomena Pinto

(AW1) examined herself and also examined two witnesses namely Vikas Desai (AW2) and Rosa Coutinho (AW3). The claimants produced three sale deeds dated 28.9.1990 (Exh.AW1/B), Sale Deed dated 4.6.1993 (Exh.AW1/C) and Sale Deed dated 11.6.1993 (Exh.AW1/D). The claimants also produced two valuation reports prepared by AW.2.

4. On behalf of the present appellants, H.N. Subramaniam (RW.1) was examined.

5. I heard Mr. H.R. Bharne, the learned Government Advocate and Mr. S.S. Kakodkar, the learned Advocate for the respondents.

6. Mr. H.R. Bharne, the learned Government Advocate would submit, and in my view fairly, that in the light of the judgment delivered by me on 6th October, 2005 in First Appeal No.32/1999 (State of Goa v. Joaquim Crasto), he does not have much to say in assailing the award of the Reference Court for barad land admeasuring 365 sq.m. whereby compensation has been awarded at the rate of Rs.100/- per sq.m.

7. In F.A. No.32/99, the issue related to compensation for compulsory acquisition of land admeasuring 305 sq.m. from the property surveyed

under No.433/4 of village Chicalim, Salcete Taluka. The said land was acquired for widening and improvement of National Highway 17 i.e. for the same purpose for which the subject land has been acquired. In F.A. No.32/99, the Notification under S.4(1) was issued on 11.5.1988 and published on 18.8.1988 while in the present case the Notification under S.4 (1) was issued on 23.5.1988 and published on 18.8.1988. In F.A. No.32/99, the claimants had, in support of their claim for compensation, relied upon the two sale deeds of the same land. That land admeasuring 402 sq.m. was first sold on 13.8.1985 at the rate of Rs. 175/- and subsequently vide Sale Deed dated 28.9.1990. In the present case though the earlier sale deed dated 13.8.1985 has not been produced but the sale deed dated 28.9.1990 has been produced at Exh.AW1/B. Rosa Coutinho who purchased the said land vide deed dated 13.8.1985 and then sold that land vide deed dated 28.9.1990. The plot that was subject matter of sale deed at Exh.AW1/B which was earlier sold vide sale deed dated 13.8.1985 which evidence has been considered in F.A. No.32/99 is situated by the side of Margao/Karwar National Highway. The acquired land in F.A. No.32/99 as well as in the acquired land in the present appeal are also adjacent to the Margao/Karwar National Highway. In the light of the decision already given by me in F.A. No.32/99, the reasons thereof may be treated as part of this Judgment, the detailed discussion is not required insofar as compensation for acquisition of barad land of 365 sq.m. is concerned and

for the self same reasons for which I upheld the award of compensation at the rate of Rs.100/- per sq.m. for the acquired land in F.A. No.32/99, for barad land admeasuring 365 sq.m., I have no hesitation in upholding compensation fixed by the Reference Court at the rate of Rs.100/- per sq.m.

8. The First Appeal, therefore, filed by the State Government and the Executive Engineer is liable to be dismissed.

9. The question now arises whether in respect of compensation for acquisition of paddy fields admeasuring 1027 sq.m., and enhancement is called for. For the land comprising of paddy fields, the Land Acquisition Officer awarded compensation of Rs.5/- per sq.m. Though the claimants before the Reference Court sought for compensation for the compulsory acquisition of paddy fields at the rate of Rs.150/- per sq.m., it appears from the impugned judgment that the Reference Court was not pursuaded to enhance the income in that regard and, accordingly, maintained the award of compensation as was offered by the Land Acquisition Officer. The Reference Court observed that the sale deed (Exh.AW1/B) cannot be considered as a comparable instance for the value of the paddy land. It also observed that there was no evidence to prove the income that the claimants used to get from the paddy field. The Reference Court, thus, declined enhancement of compensation for

paddy field.

10. Having given my thoughtful consideration, I find that with regard to the compensation for paddy field, the Reference Court overlooked the most significant aspect that both survey Nos.430/13 and 433/8 out of which the land admeasuring 612 sq.m. and 780 sq.m. came to be acquired comprised of barad land as well as paddy field. Survey No. 430/13 was partly barad land and partly paddy field. So was the Survey No.433/8. The land being composite and the market value of barad land having been determined at the rate of Rs.100/- per sq.m., the Reference Coourt ought to have considered downloading minus factors to arrive at the market value of the paddy field. The only minus factor in relation to the paddy field was that it was a level lower than the barad land requiring the depressed portion to be filled up. The evidence on re cord suggests that the barad land (garden land) was about 1 m. to 1-1/2 m. above the road level while the paddy field was half metre to one metre below the road level. Though the evidence has not been led by the claimants about the cost that was likely to be incurred for filling up the depressed portion, there is evidence of RW.1 on record who stated that Rs.60/- per cubic metre would be required as cost for filling up the depressed portion. All other factors which are relevant for determination of compensation for barad land are equally applicable for determination of compensation for paddy field which is part and parcel of

the same survey. It is not that there is a huge difference in the area of barad land and paddy field. Survey No.430/13 admeasured 612 sq.m. (175 sq.m. for barad land and 437 sq.m. for paddy field) and Survey No.433/8 admeasured 780 sq.m. (192 sq.m. of barad land and 588 sq.m. of paddy field). Save and except the difference in level, there is no other difference in these two lands. Barad land is above the road level while the paddy field is below the road level. After deducting the cost that would be required to fill up the depressed portion, the market value of the paddy field can be determined. In my view, taking into consideration the evidence of RW.1 the deduction of Rs.50/- per sq.m. from the market value of barad land shall be reasonable to arrive at the market value of paddy field on the date of Notification. By doing so the market value of the paddy field comes to Rs.50/- per sq.m. That is realistic and reasonable and to that extent the Cross Objections are allowed.

11. Consequently, First Appeal is dismissed. Cross Objections are partly allowed. The market value of the paddy field admeasuring 1027 sq.m. metres on the date of publication of Notification dated 18.8.1988 is fixed at Rs.50/- per sq.m. The enhanced compensation shall be paid by the appellants to the claimants within two months from today. The solatium, interest and other statutory benefits as awarded by the Reference Court shall be proportionately payable to the claimants on the enhanced

compensation. No costs.

R. M. LODHA, J.

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